CHARLES E. CRAFTS ET AL.

IBLA 91-463 Decided April 16, 1996

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio. UMC 47189 through UMC 47191.

Appeal dismissed.

1. Patents of Public Lands: Effect--Rules of Practice: Appeals: Jurisdiction

Issuance of a patent for lands occupied by mining claims transferred title thereto from the United States to the State of Utah, depriving the Department of the Interior of jurisdiction to continue to adjudicate the mining claimants rights in the lands despite the existence of a pending right of appeal.

APPEARANCES: Charles E. Crafts, Delta, Utah, pro se; and Millard Crafts, Trustee for Crafts Family Trust, Las Vegas, Nevada.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Charles E. Crafts and Millard Crafts, Trustee for Crafts Family Trust, have appealed from an August 23, 1991, decision of the Utah State Office, Bureau of Land Management (BLM), declaring the Dyke Nos. 1, 3, and 4 lode mining claims, UMC 47189 through UMC 47191, null and void ab initio. BLM found the claims were located entirely on land conveyed out of Federal ownership to the State of Utah on January 6, 1948.

The BLM decision under review states that:

> On June 23, 1978, documents were received for lode mining claims Dyke No. 1, located October 1, 1950, and Dyke No. 3 and 4 located October 3, 1950. The notices of location did not state a township, range or section on them. This office requested on September 19, 1979, that a legal description be furnished. The information was never submitted to this office. When the 1980 proof of labor was filed for these claims, it reflected the legal description to be T. 14 S., R 11 W., Sec. 36, S[alt] L[ake] M[eridian], Utah.

> The Utah Enabling Act of July 16, 1894, vested to the State of Utah, sections 2, 16, 32, and 36 in each township. Upon Statehood, January 4, 1896, lands in section 36, T. 14 S., R. 11 W., were unsurveyed. Title to a school section cannot pass to a State until the lands are surveyed. Upon survey, title can pass only if the section has not been appropriated and if the State has not received indemnity for it.

On April 5, 1935, a survey was accepted for this section. As the subject section was appropriated at that time, title could not pass to the State. Executive Order 6587 (Public Grazing Withdrawal No. 4) dated February 4, 1934, withdrew all of the lands in T. 14 S., R. 11 W., from settlement, location, sale, or entry. Upon revocation of E. O. 6587 by Public Land Order 434 dated January 6, 1948, title passed to the State of Utah for this section. As stated above, the subject mining claims were located entirely on lands that were conveyed out of Federal ownership on January 6, 1948. Therefore, your mining claims are hereby declared null and void ab initio.

(BLM Decision at 1, 2).

Appellants contend the Dyke Nos. 1, 3, and 4 mining claims were originally located over 65 years ago, before the April 5, 1935, official survey of sec. 36, T. 14 S., R. 11 W., and transfer of title to the State of Utah. They maintain that the 1950 locations by C. E. Crafts and Louis Schoenberger continued rights acquired from earlier locators of the claims. Appellants assert that BLM recognized the validity of the Dyke claims in an order issued June 1, 1970, in Crafts and Schoenberger v. State of Utah, Contest No. 10069, that, pursuant to stipulation, dismissed the private contest and excluded from a confirmatory patent issued to the State of Utah portions of lots 4, 5, and 6, sec. 36, T. 14 S., R. 11 W., encompassing the Dyke mining claims. Alleging "that certain papers and documents made a part of the record of Utah Land Office Contest 10069 have been misplaced or destroyed," appellants requested a hearing. They asserted the validity of the mining claims can be verified through reconstruction of the contest case file. By order dated March 16, 1992, the Board instructed BLM to produce the case file for Utah Contest No. 10069 and took the request for a hearing under advisement pending receipt of the file. The order was received by the Office of the Regional Solicitor (now Field Solicitor) in Salt Lake City on March 23, 1992, but it is unclear whether BLM was provided a copy. For whatever reasons, the requested case file was not forwarded to this Board by BLM until March 4, 1996.

Included in the case file for Utah Contest No. 10069 is a copy of Patent No. 43-91-0016, dated August 23, 1991, the same date as the decision under appeal. Patent No. 43-01-0016 was issued to confirm State of Utah title to lands granted by the Act of July 16, 1894 (28 Stat. 107), the Act of May 3, 1902 (32 Stat. 188), and the Act of January 25, 1927 (44 Stat.

1026, 43 U.S.C. § 871 (1994)). The patent states that title vested in the State of Utah upon revocation of Exec. Order No. 6587 by Public Land Order No. 434 on January 6, 1948, and describes the conveyed land as lots 4, 5, and 6, sec. 36, T. 14 S., R. 11 W., Salt Lake Meridian. The land covered by Patent No. 43-01-0016 is the same land on which Dyke Nos. 1, 3, and 4 are located. While the patent reserves to the United States rights-of-way for ditches and canals, there is no mineral reservation.

[1] Issuance of a patent, even if done by mistake, operates to transfer title to lands from the United States; the Department of the Interior then loses jurisdiction over the patented land and can no longer adjudicate the asserted rights of other claimants therein. Henry J. Hudspeth, Sr., 78 IBLA 235, 237 (1984); see Germania Iron Co. v. United States, 165 U.S. 379 (1897). It was clearly error for BLM to issue a patent while the decision now before us for review might timely be appealed. Goodnews Bay Mining Co., 81 IBLA 1, 6 (1984). Nonetheless, the fact of patent issuance makes this appeal moot. Even if appellants were able to prove a connection between the 1950 locations and earlier claim locations that take precedence over the State claim, the existence of a patent to the State raises a legal impediment that forecloses further inquiry by this Board. Unless and until the patent issued to the State of Utah is overturned by a court of competent jurisdiction, the Department lacks authority to inquire further into this matter. Merrill G. Memmott, 100 IBLA 44, 48 (1987). Because the appeal must be dismissed as moot we do not, therefore, decide whether the reasons stated by the BLM decision for declaring the mining claims null and void are correct.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the request for a hearing is denied and the appeal is dismissed.

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Franklin D. Arness
Administrative Judge

I concur:

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Gail M. Frazier
Administrative Judge